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CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS : PART AP1
-----x
THE PEOPLE OF THE STATE OF NEW YORK :
:
:
-against- : Docket No:
: 2015QN040424
HEINS RODRIGUEZ : Calendar Call
Defendant. :
-----x

125-01 Queens Boulevard
Kew Gardens, New York 11415
December 10, 2015

B E F O R E: HONORABLE GIA MORRIS
CRIMINAL COURT JUDGE

A P P E A R A N C E S:

FOR THE PEOPLE:
RICHARD A. BROWN, ESQ.
District Attorney of Queens County
125-01 Queens Boulevard
Kew Gardens, New York 11415
BY: KEVIN FOGARTY, ESQ.
ERIC MOUCHETTE, ESQ.
SHLOMIT METZ, ESQ.
Assistant District Attorneys

FOR THE DEFENDANT:
LEGAL AID SOCIETY
120-46 Queens Boulevard
Kew Gardens, New York 11415
BY: ANDRE WATSON, ESQ.

-PROCEEDINGS-

1 COURT OFFICER: Calendar 46, Heins Rodriguez.

2 MR. WATSON: The Legal Aid Society by Andre

3 Watson, W-A-T-S-O-N, on behalf of Mr. Rodriguez.

4 THE COURT: People, is your witness here?

5 MR. FOGARTY: I believe he is, Judge, I just told

6 Mr. Mouchette to come on over.

7 THE COURT: Is your client taking the ACD?

8 MR. WATSON: No.

9 THE COURT: So, the DA is on his way over with the
10 officer?

11 MR. FOGARTY: Yes. I told him to come on over.

12 THE COURT: Any issues?

13 MR. WATSON: There's hearing issues.

14 THE COURT: What do you mean by hearing issues?

15 MR. WATSON: There's Rosario issues.

16 THE COURT: That's what I'm asking; what is the
17 Rosario issue?

18 MR. WATSON: So, there's no sprints, no 911s,
19 no -- I don't believe there's a compliant report. My
20 client was taken to the hospital. There should be an
21 ambulance report or an EMS report.

22 THE COURT: An aided report?

23 MR. WATSON: Yes.

24 THE COURT: And you don't have the complaint
25 report?

-PROCEEDINGS-

1 MR. WATSON: No.

2 THE COURT: You don't have the 61?

3 MR. WATSON: I have the arrest report; I have the
4 complaint report.

5 MR. FOGARTY: Well, Mr. Mouchette is on his way
6 over.

7 THE COURT: It's a DAT. Maybe that's why you
8 don't get a complaint report.

9 MR. WATSON: I don't believe it was a DAT.

10 THE COURT: It was a DAT. It says DAT
11 investigation was signed. They checked off DAT
12 investigation on your paperwork.

13 Second call.

14 MR. WATSON: Okay.

15 (Case set aside; later recalled.)

16 COURT OFFICER: Calendar 46, Heins Rodriguez.

17 THE COURT: Appearances?

18 MR. MOUCHETTE: Your Honor, Eric Mouchette for The
19 People.

20 THE COURT: How do you spell your last name?

21 MR. MOUCHETTE: M-O-U-C-H-E-T-T-E.

22 And for the record, The People have provided a
23 copy of the officer's memo book, the marijuana field test,
24 as well as the arrest report and the DAT investigation
25 sheet.

-PROCEEDINGS-

1 THE COURT: So, was this a desk appearance ticket
2 or no?

3 MR. MOUCHETTE: No, Your Honor.

4 THE COURT: But they filled the paperwork out.
5 Was there a 911 on this?

6 MR. MOUCHETTE: Your Honor, I ordered the 911s. I
7 haven't found out whether or not they exist yet.

8 THE COURT: I don't think you need them for the
9 hearing.

10 MR. MOUCHETTE: I don't believe I do either.

11 THE COURT: Mr. Watson was also looking for an
12 aided report from your witness.

13 MR. MOUCHETTE: I do not have the aided report.

14 THE COURT: Was there an aided report?

15 MR. MOUCHETTE: I can find out from the officer,
16 but there was none in the paperwork that I have.

17 MR. WATSON: There was, Your Honor, he was taken
18 to the hospital.

19 THE COURT: That doesn't mean this officer has an
20 aided report, and it's only this officer that matters.

21 Your officer brought all of his paperwork with
22 him?

23 MR. MOUCHETTE: Yes, he did.

24 THE COURT: And you went through it with him?

25 MR. MOUCHETTE: I did, and I didn't see the aided

-PROCEEDINGS-

1 report.

2 THE COURT: For the purposes of the hearing, I
3 don't know that you need that.

4 MR. WATSON: Okay. Additionally, Your Honor, I
5 just found out that there's another video of this incident.
6 I believe it is in Mr. Mouchette's possession.

7 MR. MOUCHETTE: Your Honor, with respect to the
8 video --

9 THE COURT: What do you mean by video?

10 MR. MOUCHETTE: Your Honor, there was surveillance
11 video of a portion of the incident.

12 I don't think the videos are a complete story as
13 to what happened, and I think we could move forward without
14 the videos.

15 THE COURT: Is there a reason you can't turn them
16 over?

17 MR. MOUCHETTE: I received the disk yesterday
18 afternoon, and after receiving a disk from Mr. Watson, I
19 would be more than happy to turn them over to him,
20 Your Honor.

21 MR. WATSON: I think it's necessary for the
22 hearing.

23 THE COURT: I don't think it's necessary.

24 Why don't you have one of your colleagues make a
25 copy while we're doing the hearing?

-PROCEEDINGS-

1 And if it changes your position, we could reopen
2 the hearing. He'll give you the video after the hearing,
3 we'll leave the witness here and you could look at it and
4 tell me if you need to ask any questions related to it.

5 MR. WATSON: I do have one video; however, I mean,
6 he is charged with Resisting Arrest.

7 THE COURT: He's charged with a number of things.

8 MR. WATSON: Yeah, yeah, and also possession of
9 marijuana.

10 I do think the video shows that, the stop and the
11 search.

12 THE COURT: Is that true?

13 MR. MOUCHETTE: Your Honor, the video does not
14 show --

15 THE COURT: Who took the video?

16 MR. MOUCHETTE: The video is a surveillance video
17 that --

18 THE COURT: Do you have it with you right now?

19 MR. MOUCHETTE: I don't have it with me right now.

20 THE COURT: Why?

21 MR. MOUCHETTE: It's in my office.

22 THE COURT: But why didn't you bring it with you?

23 MR. MOUCHETTE: I didn't think the video is
24 necessary for this hearing.

25 With respect to the video, as you know, he was

-PROCEEDINGS-

1 arrested for a number of reasons, including riding his
2 bicycle, riding down the one-way street.

3 THE COURT: I know, but without that, how does
4 Mr. Watson know that?

5 MR. MOUCHETTE: He has a copy of a video.

6 THE COURT: He's saying this is a different video.
7 Who took the video?

8 MR. MOUCHETTE: Honestly, I do not know.

9 THE COURT: Well, how did you get it?

10 MR. MOUCHETTE: There was a CCRB investigation
11 conducted in connection with this. The CCRB --

12 THE COURT: I don't need to know what they found,
13 but do you have a copy of the CCRB file?

14 MR. WATSON: No, no, I have a copy of their
15 summary. Apparently, there's testimony and video.

16 THE COURT: From this witness?

17 MR. MOUCHETTE: I believe so, yes.

18 THE COURT: Do you have that in your possession?

19 MR. MOUCHETTE: I received it yesterday afternoon.

20 THE COURT: You have to turn that over before we
21 do this hearing.

22 MR. MOUCHETTE: I absolutely understand that.

23 THE COURT: If you have it now, you need to do it
24 before your witness testifies. That's Rosario.

25 Have you given it to him yet?

-PROCEEDINGS-

1 MR. MOUCHETTE: I asked him for a disk for me to
2 make a copy. We haven't had time to do it.

3 THE COURT: You can't announce ready until you
4 turn that over.

5 MR. MOUCHETTE: The thing is, we did mention this
6 on the last date.

7 THE COURT: It was not mentioned yesterday.

8 MR. MOUCHETTE: I'm sorry, Mr. Watson did mention
9 there was CCRB testimony.

10 THE COURT: Not yesterday, not yesterday.

11 MR. MOUCHETTE: Not yesterday, the day before.

12 THE COURT: Okay. Well, if you have that before,
13 you can proceed to hearings on this. You need to turn that
14 over.

15 MR. MOUCHETTE: I absolutely will turn it over,
16 Your Honor.

17 THE COURT: You didn't it bring with you.

18 MR. MOUCHETTE: Because I didn't receive a
19 blank --

20 THE COURT: You are legally required to do turn it
21 over. It doesn't matter whether Mr. Watson gives you a
22 tape or not. Before you go forward on a hearing and you
23 have testimony, you have to turn it over. You're legally
24 required to do that. It's Rosario. Before the witness
25 takes the stand, if he testified relating to this incident,

-PROCEEDINGS-

1 it needs to be disclosed, so before we could even do this
2 hearing, Mr. Watson needs that.

3 So, we'll second call this case.

4 You could go up to AP6.

5 Don't go far, Mr. Watson. We're not on Central
6 Standard Time; we're still doing Eastern Standard Time.

7 (Case set aside; later recalled.)

8 COURT OFFICER: Recalling calendar 46, Heins
9 Rodriguez.

10 THE COURT: So, we had a bench conference in which
11 I learned that the Civilian Compliant Review Board has
12 turned over some records but not all the records, and the
13 records that we are missing are records pertaining to the
14 testimony the police officer took with respect to the facts
15 and circumstances of this case; is that everybody's
16 understanding?

17 MR. MOUCHETTE: Yes.

18 MR. WATSON: Yes, Your Honor.

19 MR. MOUCHETTE: Yes, to the extent that I'm not
20 sure if they actually exist in audio file. They told me
21 they did, in fact, send me everything they have, and it did
22 not include an actual transcript that the officer provided,
23 as well as any audio of any testimony.

24 THE COURT: But he did tell you he testified in
25 this case, correct?

-PROCEEDINGS-

1 MR. MOUCHETTE: That's my understanding. He was
2 interviewed.

3 THE COURT: And they have indicated they won't
4 turn over certain things?

5 MR. MOUCHETTE: My understanding is that they told
6 me they don't do formal, you know, hearings. They do
7 interviews. And their position is that any documents that
8 they provide The Government are non-discoverable in that
9 proceeding.

10 THE COURT: They think they could give it to you
11 and you not be able to turn it over?

12 MR. MOUCHETTE: That's correct.

13 THE COURT: Has Jim Leander weighed in on this?

14 MR. MOUCHETTE: No, he has not.

15 But I did receive a letter from Assistant Deputy
16 Executive Director of Investigations, Lindsay Fluke (ph),
17 who requested an opportunity to come and argue before The
18 Court to the extent that Defense Counsel requests access to
19 the paper documents they provided.

20 THE COURT: So, with respect to this, I want the
21 District Attorney's Office to coordinate with Jim Leander's
22 group. He's the Chief of Public Integrity. I've known him
23 for many years because of my prior job history, and he may
24 be able to resolve some of the issues.

25 But they absolutely have to turn over anything

-PROCEEDINGS-

1 related to testimony taken by an officer relating to this
2 criminal case. They can't give it to you and tell you that
3 you can't tun it over.

4 MS. METZ: No, no, it's just that we have to
5 follow the procedures. We will comply. We just have to
6 jump through additional hoops --

7 THE COURT: You have to jump through those hoops
8 because I can't do a hearing when Mr. Watson doesn't have
9 testimony on the exact issue from a prior proceeding.

10 MS. METZ: Understood.

11 MR. WATSON: Thank you.

12 THE COURT: We'll try to coordinate it.

13 Mr. Watson, I'll sign a subpoena, but just make it
14 very specific so that it's relating to any records that
15 they have pertaining to testimony about this incident by
16 this officer.

17 MR. WATSON: Okay.

18 THE COURT: I'm not asking if they wrote
19 handwritten notes, if they have an audio, but if they took
20 notes, I think that is discoverable since they are a
21 government entity. We may end up having them come here,
22 but we'll deal with that when the time comes.

23 So, how long does this usually take?

24 Ms. Metz, do you have any idea?

25 MS. METZ: I don't.

-PROCEEDINGS-

1 MR. MOUCHETTE: I don't know, Your Honor, but I
2 could call them and ask.

3 THE COURT: I would call Jim Leander because he
4 probably deals with them on a regular basis and he might
5 have a relationship with them and he might be able to help
6 negotiate some of these issues.

7 So, the case -- your client was arrested in
8 August, so it's not terribly old.

9 Do you want to do a December date or a January
10 date?

11 Did your client testify?

12 MR. WATSON: Yes, he did.

13 THE COURT: You know, if he testified at trial,
14 you're going to have to get those records.

15 MR. WATSON: They have it.

16 THE COURT: Those they'll turn over?

17 MR. MOUCHETTE: I just have the audio of his --

18 THE COURT: But not with respect to the officer.

19 MR. MOUCHETTE: With respect to his -- he refused
20 to provide any statements.

21 THE COURT: But if they're willing to turn over
22 his, they should turn over the officer's as well.

23 Do you want a December date, Mr. Watson, or a
24 January date?

25 MR. WATSON: We could do early January,

-PROCEEDINGS-

1 January 5th.

2 THE COURT: I know I'm not going to be in court
3 that day, so let's do that Friday, January 8th.

4 MR. MOUCHETTE: Your Honor, I won't be here on the
5 8th. I'm going to be on vacation. I expect to be back by
6 the 20th.

7 THE COURT: All right. How's January 25th, 26th
8 or 27th?

9 MR. WATSON: We could do late December if you
10 want.

11 THE COURT: Do you want December 22nd or December
12 23rd?

13 We could put it on even for control to see where
14 we are so we don't go too far without knowing what's going
15 on; is that okay?

16 MR. WATSON: Yes.

17 THE COURT: December 22nd or 23rd?

18 MR. WATSON: The 22nd.

19 (Continued on following page.)
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-PROCEEDINGS-

1 THE COURT: AP1, December 22nd.

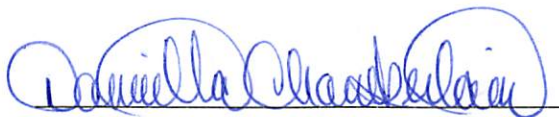
2 We'll put it on for the CCRB records and see where
3 we are and see if a subpoena is needed or what they're
4 going to do with that.

5 AP1, December 22nd.

6 Parole is continued.

7 *****

8 This is certified to be a true and accurate
9 transcript of the stenographic notes.

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14 DANIELLA CHAMBERLAIN

15 Senior Court Reporter
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1 CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: PART AP1

2 -----X
THE PEOPLE OF THE STATE OF NEW YORK, :

3 -against

DOCKET NO.

4 HEINS RODRIGUEZ,

: 2015QN040424

5 :
Defendant.

6 -----X calendar call

7 125-01 Queens Boulevard
Kew Gardens, New York 11415

8 December 22, 2015

9
10 B E F O R E:

11 THE HONORABLE GIA MORRIS,
12 Judge.

13
14 A P P E A R A N C E S:

15 OFFICE OF RICHARD A. BROWN
16 DISTRICT ATTORNEY - QUEENS COUNTY
17 BY: SHLOMIT METZ, Esq.
Assistant District Attorney

18
19 THE LEGAL AID SOCIETY
Attorneys for Defendant
20 120-46 Queens Boulevard
Kew Gardens, New York 11415
21 BY: ANDRE WATSON, Esq.

22
23 FONDA NASON
24 OFFICIAL COURT REPORTER
25

1 THE COURT OFFICER: AP1, Calendar Number
2 37, Heins Rodriguez.

3 MR. WATSON: Andre Watson, Legal Aid
4 Society.

5 THE COURT: This was sort of put on for
6 CCRB to turn over the records. My understanding
7 is they have provided an audio or they are
8 providing to Mr. Watson an audio of the
9 officer's testimony, which is exactly what we
10 needed that was missing.

11 MS. METZ: I'm handing over a disk right
12 now.

13 MR. WATSON: It's my understanding that
14 there is actual --

15 THE COURT: No. You are entitled to audio.
16 That's what you get. That's all I'm giving you.

17 MR. WATSON: So I think there is a PDF of
18 the actual statements from the officer.

19 THE COURT: No, they told me they had
20 audio. That's what they are turning over.
21 Otherwise I'm going to have to sign a protective
22 order. The actual audio of the testimony that
23 he provided at the CCRB, is that what you are
24 getting? When can we do the hearing? That's
25 what I was told they had.

1 MR. WATSON: If I may, it's my
2 understanding that the District Attorney told me
3 that he is in possession of hundreds of pages of
4 material given to him by the CCRB.

5 THE COURT: Not relating to this officer's
6 testimony. They told me they have -- the issue
7 was the audio transcript that needed to be
8 provided. That's what you are entitled to. If
9 they have something in their custody they will
10 have to tell us that.

11 MR. WATSON: So DA Mouchette told me he has
12 documents from CCRB.

13 THE COURT: But not relating to the
14 officer's testimony. They turn over testimony,
15 that's what you were entitled to. That's what
16 you are getting. I don't want to spend time
17 talking about it. If you think you are missing
18 something, you can file a motion. My issue is
19 they didn't give you the audio transcript of the
20 testimony that the officer gave for the CCRB.
21 They have now given that.

22 MR. WATSON: I would ask for en camera
23 inspection.

24 THE COURT: They told me at side bar that
25 the only thing they had and Brian from CCRB,

1 Krist, told me they were providing an audio
2 transcript. They were going to give me a motion
3 for protective order for any other documents. I
4 gave it back to him because that's all that he
5 turned over.

6 MR. WATSON: It's my understanding that the
7 assistant DA has actual documents in his
8 possession that pertain.

9 THE COURT: That's not what I was told.
10 You can file a motion if you believe there is
11 something missing that I don't have. That's not
12 what I was told.

13 MS. METZ: Your Honor, I just spoke to Mr.
14 Mouchette. My understanding is that any of the
15 documents that he has are actually my
16 understanding just work product or the same work
17 product of an individual sitting there listening
18 to the audio. It's not something that he is
19 entitled to.

20 THE COURT: Doesn't sound like it. You
21 have the audio. Listen to the audio. Make sure
22 it's the officer's testimony.

23 MS. METZ: They made a motion to not turn
24 anything else over.

25 THE COURT: Mapp, Dunaway. What date?

1 MS. METZ: Handing up copy of Mr. Krist's
2 motion to the court.

3 THE COURT: I gave it back to him because
4 they provided what I needed them to provide.

5 MR. WATSON: If I wanted any additional
6 discovery I can make a motion.

7 THE COURT: You are not entitled to
8 anything else. I don't know what you want.

9 MR. WATSON: Potentially that could be
10 Brady material. We don't know what's in it.

11 THE COURT: You have the audio transcript.
12 It can't be Brady, because you have an actual
13 audio recording of the officer's testimony
14 testifying before the CCRB. That's what you are
15 entitled to.

16 MR. WATSON: They did a full fledged
17 investigation into the incident that happened
18 with my client. They interviewed witnesses.

19 THE COURT: Unless those witnesses are
20 testifying, you are not entitled.

21 MR. WATSON: But it could be potential
22 Brady.

23 THE COURT: Anything could be potential
24 Brady. If there is a witness that you want to
25 subpoena for the trial, that's all you have to

1 do, but you are not entitled to that. That's
 2 not a witness that is testifying. If the
 3 officer was testifying, the reason why we didn't
 4 do the hearing on the last date was because the
 5 officer testified before the CCRB and the DA had
 6 not turned over because they didn't have a copy
 7 of the audio transcript. Now that I have seen
 8 them they handed that to you. I was told by Mr.
 9 Krist that's what they gave -- you have --
 10 that's what you are entitled to.

11 MS. METZ: 21 or 22 of January. Otherwise
 12 the 10, 11, 15, 16 of February.

13 MR. WATSON: 11.

14 THE COURT: I don't want to do the 11. I
 15 think it's going to be a combined part week
 16 because it's on the heels of a holiday week.

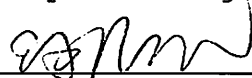
17 MS. METZ: 10 or 16?

18 THE COURT: Either one of those.

19 MR. WATSON: February 16th.
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THE COURT: AP1, February 16th, for the
hearings.

I hereby certify the foregoing to be a true and
accurate transcript of the proceeding.


Fonda Nason,
Official Court Reporter

1 CRIMINAL COURT OF THE CITY OF NEW YORK
2 COUNTY OF QUEENS : PART JP1

3 -----x
4 THE PEOPLE OF THE STATE OF NEW YORK :

5 -against- :

6 HEINS RODRIGUEZ :

7 Defendant. :

8 Docket No:
9 2015QN040424
10 Hearing

11 -----x
12 125-01 Queens Boulevard
13 Kew Gardens, New York 11415
14 March 23, 2016

15 B E F O R E: HONORABLE STEPHANIE ZARO
16 CRIMINAL COURT JUDGE

17 A P P E A R A N C E S:

18 FOR THE PEOPLE:
19 RICHARD A. BROWN, ESQ.
20 District Attorney of Queens County
21 125-01 Queens Boulevard
22 Kew Gardens, New York 11415
23 BY: ERIC MOUCHETTE, ESQ.
24 SHLOMIT METZ, ESQ.
25 Assistant District Attorneys

FOR THE DEFENDANT:
LEGAL AID SOCIETY
120-46 Queens Boulevard
Kew Gardens, New York 11415
BY: ANDRE WATSON, ESQ.

DANIELLA CHAMBERLAIN - SENIOR COURT REPORTER

-PROCEEDINGS-

1 COURT OFFICER: Calender number six, Heins
2 Rodriguez.

3 MR. WATSON: The Legal Aid Society by Andre
4 Watson, W-A-T-S-O-N, on behalf of Mr. Rodriguez.

5 Good afternoon.

6 THE COURT: Good afternoon.

7 MR. MOUCHETTE: Good afternoon, Your Honor.
8 Eric Mouchette on behalf of The People.

9 THE COURT: Good afternoon.

10 What kind of a hearing is this?

11 MR. MOUCHETTE: Your Honor, it's a Mapp/Dunaway
12 hearing.

13 THE COURT: One witness?

14 MR. MOUCHETTE: Yes, Your Honor, only one witness.

15 THE COURT: Okay. No way to resolve this with an
16 ACD and a 30-day sealing?

17 MR. MOUCHETTE: Your Honor, the defendant has
18 refused the prior offer of an ACD.

19 The current offer is now a 240.20.

20 THE COURT: I got it.

21 MR. MOUCHETTE: Also, for the record, The People
22 served Defense Counsel with an arrest report, DAT
23 investigation sheet, the officer's memo book, property
24 clerk invoices, as well as a radio run and sprint report.

25 THE COURT: Okay.

-PROCEEDINGS-

1 MR. WATSON: I received all of those. I just
2 received a copy of the radio run and sprint report. I
3 could review that over lunch.

4 THE COURT: We're probably not going to get done
5 anyway.

6 MR. WATSON: Okay.

7 THE COURT: Call your first witness.

8 MR. MOUCHETTE: Your Honor, The People call
9 Officer Zuopeng Zheng.

10 COURT OFFICER: Witness entering.

11 COURT OFFICER: Face me and raise your right hand,
12 please.

13 Do you swear to tell the truth, the whole truth
14 and nothing but the truth so help you God?

15 THE WITNESS: Yes, I do.

16 COURT OFFICER: In a loud, clear voice, please
17 state your name, shield and command.

18 THE WITNESS: Police officer Zheng, 110th
19 Precinct, Shield 25461.

20 THE COURT: That's what I like, a loud voice.
21 That's great.

22 THE WITNESS: Thank you.

23 THE COURT: Very good.

24 You my inquire.

25 DIRECT EXAMINATION

1 BY MR. MOUCHETTE:

2 Q Good morning, Officer.

3 A Good morning.

4 Q Who is your employer?

5 A New York City Police Department.

6 Q What's your rank?

7 A Police officer.

8 Q What's your current assignment?

9 A I'm the Highway Safety officer of the 110th Precinct.

10 THE COURT: Which precinct?

11 THE WITNESS: The 110th Precinct.

12 Q How long have you been at that assignment?

13 A I've been doing Highway Safety for four years now.

14 Q How long have you been a police officer?

15 A Almost ten years.

16 Q About how many arrests have you made?

17 A Over 200.

18 Q Okay. Now, directing your attention to August 13,
19 2015, were you working that day?

20 A Yes, I was.

21 Q Okay. What tour were you working?

22 A I was working between 1100 hours to 1935, 7:35 at
23 night.

24 Q Okay. Were you working alone or with a partner?

25 A With a partner.

-P.O. ZHENG - PEOPLE - DIRECT-

1 Q In plain clothes or uniform?

2 A Uniform.

3 Q Foot patrol or in a vehicle?

4 A In an unmarked vehicle.

5 THE COURT: Unmarked you said?

6 THE WITNESS: Unmarked vehicle.

7 Q Were you assigned to any specific tasks that day?

8 A My sole purpose that day was bicycle enforcement, any
9 bicyclists going against the wrong way, any moving violation
10 that day.

11 Q Did you make an arrest that day?

12 A Yes, I had.

13 Q Who did you arrest?

14 A Mr. Heins Rodriguez.

15 Q Do you see that person in the courtroom today?

16 A Yes.

17 Q Could you describe an article of clothing that person
18 is wearing?

19 A The blue jacket, sitting right over there (indicating).

20 THE COURT: Indicating the defendant.

21 Q Directing your attention to approximately 4:45 p.m.,
22 were you in the vicinity of 104th Street and 43rd Avenue?

23 A Yes, I was.

24 Q Okay. Is that location in Queens County?

25 A Yes.

-P.O. ZHENG - PEOPLE - DIRECT-

1 THE COURT: You said 43rd Avenue?

2 MR. MOUCHETTE: 43rd Avenue, Your Honor.

3 THE COURT: Thank you.

4 Q What brought you to that location?

5 A I had one person stopped at the location for running a
6 stop sign southbound on 104th Street and just passed the
7 intersection of 42nd Avenue.

8 Q Could you describe the area?

9 A 104th Street is a one-way street going southbound only.
10 Coming to the intersection of 43rd Avenue, it is -- the traffic
11 light is at the location. 43rd Avenue is going eastbound to
12 westbound. I was at the northeast corner of the location and
13 there's four one-way street signs affixed to the corner. The
14 signs have black letters, white background. They say: One-Way
15 street. They prevent traffic going northbound on 104th Street
16 and 43rd Avenue.

17 Q Which direction were you facing?

18 A I was facing southbound at the time.

19 Q At around 4:45 p.m. what did you observe?

20 A While I was writing the summons, my partner jumped out
21 of the car. I looked up and I see Mr. Heins Rodriguez traveling
22 northbound on 104th Street, pass the intersection of 43rd
23 Avenue. Also, at this point, I observed the traffic light where
24 I was facing is a steady red phase at the time. So, at that
25 point, my partner tried to stop Mr. Rodriguez.

1 Q Just to clarify, was he going against traffic or with
2 traffic?

3 A Against traffic.

4 Q Okay. Now, the stoplight, what color was the stoplight
5 that was facing you? The side that was facing you, what color
6 was it?

7 A It was red at that time.

8 Q What happened after your partner had seen the
9 defendant?

10 A He was approximately, like, I'd say, a car length away,
11 and he passed the intersection of 43rd Avenue. At this time he
12 was southbound on 104th Street --

13 THE COURT: So, you get credit for speaking loudly
14 but demerits for speaking too fast.

15 THE WITNESS: I'm sorry. I'm in Traffic Court too
16 much. I'm sorry.

17 He was on the south side on 43rd Avenue on 104th
18 Street at this time.

19 THE COURT: He, being who? Your partner or the
20 defendant?

21 THE WITNESS: Mr. Rodriguez.

22 THE COURT: The defendant, all right.

23 THE WITNESS: Right.

24 He passed the intersection at approximately a car,
25 two-car lengths away, and my partner tried to stop him at

1 this time.

2 Q Did you have authority to arrest him at that point?

3 A Yes.

4 Q For what?

5 A For going the wrong way down a one-way street. It was
6 a moving violation.

7 Q So, after your partner signalled to him, you said he
8 made a right? He made a U-turn and made a right?

9 A No, no, no, he made a U-turn.

10 MR. WATSON: Objection.

11 THE COURT: I'll allow it.

12 A He made a U-turn at the location and made a right turn
13 onto 43rd Avenue, which is westbound on 43rd.

14 Q Could you tell me what happened next?

15 A At that point my partner jumped in the car. We started
16 pursuing the bicyclist, which is Mr. Rodriguez. We chased him
17 approximately a thousand feet away.

18 THE COURT: He was on a bicycle?

19 THE WITNESS: He was on a bicycle.

20 THE COURT: Okay.

21 THE WITNESS: We got to approximately the
22 intersection of 102nd Street, still on 43rd Avenue. He hit
23 a parked car at this location, and we placed him under
24 arrest at that location.

25 Q Okay. Now, taking you back to when he initially

1 crossed the intersection, you said that the light facing you was
2 red. Now, the defendant passed that light. When the defendant
3 crossed the intersection, what color was the light when it was
4 facing you?

5 A For me, at the time, it was red.

6 Q Did you officially report anything about the defendant
7 passing that light?

8 A I did charge him for passing that light initially.

9 Q Why did you report that?

10 A While I was facing the light, the light was steady red.
11 My assumption at the time was he just passed a red light going
12 against traffic.

13 Q Was that true?

14 A Unfortunately, no.

15 Q When did you realize it wasn't true?

16 A Actually, the very next day when I was going to work --

17 MR. WATSON: Objection.

18 THE COURT: I'll allow it.

19 You could answer.

20 A The very next day, I was going to work, I did realize
21 when I stopped that it was a three-phase light, not a four-phase
22 light. There's no light facing southbound. There's no
23 northbound traffic allowed.

24 Q Did you intend to report false information?

25 A No.

1 Q Why did you report it?

2 A Initially, when I had made the stop, it was the light
3 for me. It was red at the time.

4 Q Was it a mistake?

5 A Yes.

6 Q Did you ever correct that?

7 A Yes, I did.

8 Q How did you correct that?

9 A I spoke to the ADA the next day and we did another
10 affidavit and I signed another affidavit for it.

11 Q Was there a new affidavit filed?

12 A It was.

13 Q Did you sign that?

14 A Yeah, I did.

15 Q Did you correct that mistake?

16 A Yes.

17 Q Now, going forward, back to when you arrested him, did
18 you place handcuffs on him?

19 A Yes.

20 Q About how long did it take for you to place handcuffs
21 on him?

22 A It took awhile. I don't know the exact time.

23 Q On average, how long does it take to place handcuff on
24 a defendant?

25 A If the person cooperates, it should take no more than

1 five seconds, 10 seconds.

2 Q Did it take more than that time?

3 A Yes, it felt longer.

4 Q Why did it take longer?

5 A He kept moving his body around, asking me, why, why,
6 why, and I couldn't handcuff him right away.

7 Q When you arrested him, what is the arrest for?

8 A The moving violation, which at the time, I assumed, was
9 a red light, and also going the wrong way down a one-way street.

10 Q Thank you. Also, was any property recovered in
11 connection with the arrest?

12 A He had a backpack with him at the time of the arrest.

13 Q Where was the backpack when you recovered it?

14 A On his body, on his back.

15 Q Now, when was the bag recovered?

16 A Right on the scene at the time.

17 Q Okay. Was the defendant under arrest when you
18 recovered it?

19 A Yes.

20 Q Did anyone search that bag at the location?

21 A No. We searched the bag back at the precinct.

22 Q Did anyone, other than you, search the bag?

23 A No.

24 Q Did anyone look into the bag prior to you searching the
25 bag at the precinct?

1 A No.

2 Q Okay. About how long -- how much time past between the
3 time you recovered the bag at the scene and the time you
4 searched the bag?

5 A Approximately, I would say, 15 minutes or so.

6 Q Okay. Was the bag, throughout that time, in anyone's
7 possession?

8 A No.

9 Q Okay. Why did you search the bag at the precinct?

10 A First of all, for our own safety. I don't know what's
11 in the bag. You know, we have to search for safety reasons.

12 Number two, anything he possessed, at the time, he
13 could not bring down to Central Booking where we go to The Court
14 section, and we have to itemize the property for him and make a
15 safekeeping voucher just to give him a receipt for him to pick
16 it up the next day.

17 Q Why do you need to keep items for safekeeping?

18 A It's just the standard procedure of the NYPD.

19 Q Are there concerns about --

20 MR. WATSON: Objection.

21 THE COURT: Don't lead.

22 Q What is the purpose of documenting each item in the
23 backpack?

24 A Preventing a lawsuit with people against me. Also --

25 MR. WATSON: Objection, Your Honor.

-P.O. ZHENG - PEOPLE - DIRECT-

1 THE COURT: I'll allow it. He said it's standard
2 procedure.

3 A Also, for the good of the people who own the property.
4 We know what he had at this location at the time, so we could
5 make a list of it and give him the receipt for it.

6 Q Now, is there a particular name for the type of search
7 conducted?

8 A It's called a property invoice.

9 Q Now, is there a standard procedure for conducting a
10 property invoice search?

11 A Yes.

12 Q Could you describe that procedure?

13 A It's a procedure that -- anything that belongs to the
14 prisoner that we take, we have to itemize his stuff and make a
15 list in a computer entry and also give them the receipt for it.

16 Q Okay. What is an inventory search?

17 A Basically, everything that he had on him at the time,
18 we have to make a list of it, anything that he had at the time.

19 Q Is that what you did here?

20 A Yes.

21 Q Now, does that procedure apply to bags recovered from
22 the defendants who are arrested?

23 A Say that again?

24 Q Does that procedure apply to bags recovered from
25 defendants who are arrested?

-P.O. ZHENG - PEOPLE - DIRECT-

1 A Yes, of course.

2 Q What, if anything, did you recover?

3 A I don't have the list right now, if I could refer?

4 MR. MOUCHETTE: Could I have this document --

5 THE COURT: Let him look at it to refresh his
6 recollection.

7 This is, what, a property invoice?

8 MR. MOUCHETTE: Yes, it is, Your Honor.

9 THE COURT: You have that, Mr. Watson?

10 MR. WATSON: Yes, Your Honor.

11 THE COURT: Look at it and see if it refreshes
12 your recollection as to what was in this bag.

13 COURT OFFICER: (Handing).

14 THE WITNESS: Yes, that's the voucher that I did
15 for the defendant at the time.

16 THE COURT: I'm sorry?

17 THE WITNESS: That's the three vouchers that I did
18 for the defendant at the time.

19 Q Could you tell us what's in the bag?

20 A Yes. There's a necklace and some personal belongings
21 as to sunglasses, a backpack -- the necklace was a separate
22 voucher because it's a jewelry voucher. Anything belonging in
23 the backpack has separate vouchers. There was 12 ziplock bags
24 of marijuana, a separate voucher as arrest evidence at the time.

25 Q Was there anything in the bag that you did not voucher?

-P.O. ZHENG - PEOPLE - DIRECT-

1 A No.

2 Q Are you required to voucher everything in the bag?

3 A Yes.

4 Q Okay. Did you do anything different from the standard
5 procedure?

6 A No.

7 Q What did you do with the marijuana found?

8 A I did a field test at the location and it tested
9 positive and I vouchered it as marijuana.

10 Q Where does it go from there?

11 A It's sent to the lab, I think.

12 MR. MOUCHETTE: Nothing further, Your Honor.

13 THE COURT: I'm going to have you come back at
14 2:15. We'll do cross-examination. Don't speak to anybody
15 about your testimony.

16 Mr. Watson, you'll listen to the 911?

17 Hello?

18 You'll listen to the 911 during the lunch break,
19 and you'll be prepared to do your cross-examination at
20 2:15?

21 MR. WATSON: Yes, Your Honor.

22 THE COURT: Everybody, be back here at 2:15.

23 (Whereupon, there is a luncheon recess taken and
24 the case is adjourned to 2:15 p.m.)

25 --- A F T E R N O O N S E S S I O N ---

-PROCEEDINGS-

1 COURT OFFICER: Number six, case on the record,
2 Heins Rodriguez.

3 MR. WATSON: Your Honor, so, in this case, there
4 is a civilian complaint, a review board complaint. At that
5 hearing, Mr. Zheng -- Officer Zheng is probably going to
6 testify. I believe his testimony is materially different
7 from what was said at this hearing with regards to the Mapp
8 issue. So, at this point I want to call Police Officer
9 Chen, who is Officer Zheng's partner.

10 THE COURT: Counsel, I don't understand. This
11 case is not exactly a new case. It's going back to August.

12 MR. WATSON: Yes.

13 THE COURT: So, why didn't you take care of this
14 before?

15 MR. WATSON: I didn't know what Police Officer
16 Zheng was going to testify to.

17 THE COURT: Well, do you have the minutes of the
18 CCRB hearing?

19 MR. WATSON: Yes.

20 THE COURT: May I see that?

21 MR. WATSON: From both officers, Your Honor.

22 THE COURT: You're telling me if you want to get
23 the partner -- if I look at it and I believe there's
24 nothing in there that's completely different, I'm not going
25 to allow it. This is not a civil case.

-PROCEEDINGS-

1 MR. WATSON: Police Officer Chen is page six,
2 Your Honor.

3 THE COURT: Page what?

4 MR. WATSON: Page six.

5 COURT OFFICER: (Hanging).

6 THE COURT: Seems pretty similar to me.

7 MR. WATSON: Just to be clear, I believe Police
8 Officer Chen testifies that he was the one that recovered
9 the marijuana.

10 THE COURT: That's not sufficient for me to --

11 MR. WATSON: In addition -- additionally, that
12 record seems to indicate that the marijuana was recovered
13 at the scene and not at the precinct.

14 THE COURT: It's great testimony for trial; it's
15 not going to be sufficient for me.

16 MR. WATSON: I believe that -- Your Honor, I
17 believe that it goes towards whether or not there is an
18 inventory search or whether or not -- whether or not there
19 is an inventory search versus whether or not there's a
20 closed container at the scene. I believe it's a legal
21 issue to be hashed out at the hearing.

22 If the police officer testifies that he recovered
23 the bag at the scene, it changes the whole hearing,
24 Your Honor.

25 THE COURT: How?

-PROCEEDINGS-

1 MR. WATSON: Because there would be a Gokey (ph)
2 issue where here there is none.

3 THE COURT: Well, I have to determine this
4 officer's credibility. The fact that two officers may
5 testify a little bit differently is a good thing because if
6 they will testified exactly the same, I probably wouldn't
7 believe it.

8 MR. WATSON: But I believe that the officer is
9 going to testify that he recovered the marijuana at the
10 scene.

11 THE COURT: Which officer?

12 MR. WATSON: Officer Chen.

13 THE COURT: He already testified --

14 MR. WATSON: Officer Zheng testified.

15 THE COURT: You're talking about another officer?

16 MR. WATSON: Yes, Officer Chen is his partner.

17 THE COURT: Let me see that again.

18 COURT OFFICER: (Hanging).

19 MR. WATSON: Just to be clear, Officer Chen was
20 his partner at the time of the arrest.

21 THE COURT: Page six doesn't say anything about
22 the marijuana.

23 MR. WATSON: At the bottom of page six.

24 THE COURT: Okay. But that doesn't say that he --

25 MR. WATSON: I don't have the minutes in front of

-PROCEEDINGS-

1 me but I believe --

2 THE COURT: That's a conclusion.

3 MR. WATSON: I believe it states in sum and
4 substance: We arrested him, I searched his bag and we came
5 up with the marijuana.

6 THE COURT: It says: I'm checking his bag.
7 Inside his bag there were 12 pouchs of marijuana and now I
8 realized, you know, that's why he fled.

9 MR. WATSON: His testimony strongly indicates that
10 the marijuana was recovered at the scene, not at the
11 precinct.

12 THE COURT: Marijuana was recovered at the scene.

13 MR. WATSON: Yes, but that he searched his bag at
14 the scene.

15 MR. MOUCHETTE: Your Honor, may I take a look at
16 the minutes?

17 THE COURT: Yes.

18 COURT OFFICER: (Hanging).

19 MR. WATSON: ADA Mouchette has been in possession
20 of these minutes.

21 Page six.

22 So, would I be permitted to call the partner,
23 Your Honor?

24 THE COURT: I'll let you, for whatever it's worth.

25 MR. WATSON: Thank you.

-PROCEEDINGS-

1 THE COURT: Where is Ms. Metz?

2 MR. MOUCHETTE: She's on her way. I'll give her a
3 call.

4 THE COURT: Why don't you speak to your officer
5 and see if he knows his partner's schedule?

6 MR. MOUCHETTE: Okay.

7 MR. WATSON: Would we have to subpoena him,
8 Your Honor?

9 THE COURT: No, no. We'll get him to bring him
10 in.

11 (Whereupon, there is a pause in the proceeding.)

12 COURT OFFICER: Back on the record with Heins
13 Rodriguez.

14 MR. WATSON: Your Honor, just to save time, I
15 believe there's a stipulation. There's two videos of the
16 incident. I would ask if The People would stipulate them
17 coming into evidence as Defendant's A and B.

18 MR. MOUCHETTE: Yes. We turned it over to them,
19 and we don't have any objection to that.

20 THE COURT: You want to play it?

21 MR. WATSON: Yes.

22 THE COURT: You want to do this before we bring
23 the officer in?

24 MR. WATSON: No. When the officer is here.

25 THE COURT: Let's bring the officer in.

-PROCEEDINGS-

1 COURT OFFICER: Witness entering.

2 COURT OFFICER: Officer, let me just remind you
3 you're still under oath.

4 THE WITNESS: Yes.

5 MR. WATSON: Just for the record, I just want to
6 make sure these are in evidence.

7 THE COURT: You could sit.

8 Just remember that you're still under oath.

9 So, we finished direct. We're up to cross.

10 Mr. Watson, you have two videos, which will be
11 Defendant's A and B, which you want to play?

12 MR. WATSON: Yes.

13 THE COURT: People, you have no objection?

14 MR. MOUCHETTE: No, Your Honor.

15 THE COURT: You have no objection to Defendant's A
16 and B going into evidence?

17 MR. MOUCHETTE: No, Your Honor.

18 THE COURT: Now we're going to play them.

19 MR. WATSON: Yes.

20 THE COURT: Do you want to play them before you
21 have any questions for the officer?

22 MR WATSON: Can I play them later?

23 THE COURT: Whenever you want.

24 How long are these tapes?

25 MR. WATSON: They're a minute and a half each.

1 They're not that long.

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MR. WATSON:

5 Q Officer Zheng, so, you've been a police officer for ten
6 years, correct?

7 A Almost ten -- nine and a half years.

8 Q Okay. And you work with the 110th Precinct?

9 A Yes.

10 Q Okay. On August 13, 2015, you were on duty, correct?

11 A Yes.

12 Q On that date, you were issuing a bike summons?

13 A Just for bicyclists, any moving violations for
14 bicyclists.

15 Q You were on duty with your partner, Police Officer
16 Chen?

17 A Correct.

18 Q Okay. He was with you when you arrested my client?

19 A Can you rephrase?

20 Q Police Officer Chen was with you when you arrested my
21 client?

22 A Yes.

23 Q He assisted you in arresting my client?

24 A Yes.

25 Q Just moving on, you testified on direct that there's an

1 issue with the red light, correct?

2 A Yes.

3 Q In fact, you made a mistake when you put in your
4 paperwork that my client ran a red light?

5 A Yes. I did charge him with running a red light.

6 Q When did you make the DA aware of that?

7 A Sometime after the arrest, the day after or a week
8 after. I don't remember exactly the date.

9 Q So, it was about a week?

10 A I'm not sure.

11 Q Okay. Was it --

12 A I know I signed an affidavit.

13 Q You signed an affidavit?

14 A Right.

15 Q I'm trying to figure out when exactly you made the DA
16 aware of the mistake.

17 THE COURT: He just said he doesn't remember.

18 Q Was it more than a month?

19 A I'm not exactly sure of the time, no.

20 Q So, Police Officer Zheng, isn't it a fact that you
21 testified at a hearing on September 18, 2015 for a CCRB --

22 A I don't know the exact date, but I did testify in front
23 of CCRB, yes.

24 Q At that hearing was Investigator Velasquez?

25 A I don't remember the name or anything but two

1 investigators were there.

2 Q And the investigator asked you questions?

3 A Yes.

4 Q You answered those questions?

5 A Yes, I did.

6 Q Okay. You also had an attorney with you?

7 A Yes.

8 Q Her name was Ms. Freedman?

9 A I can't remember, I'm sorry.

10 Q Okay. In addition to the CCRB, the Internal Affairs
11 Bureau looked into this incident, correct?

12 A They did.

13 Q Did you give any statements to the Internal Affairs
14 Bureau?

15 A No.

16 Q Also, I believe the chief of the department looked into
17 this incident?

18 A I assume. I'm not aware of that, no, I'm sorry.

19 Q Did you give any statements to any other department
20 other than CCRB?

21 A Just CCRB, I assume. I think just CCRB.

22 Q You spoke to ADA Mouchette about this case, correct?

23 A Yes.

24 Q In fact, hours after the arrest you spoke with ADA
25 Mouchette?

1 A Yes.

2 Q He's the one that wrote this case up for you?

3 A I think so, the affidavit, yes.

4 Q So, yes, ADA Mouchette?

5 A Yes, I'm sorry.

6 Q So, on direct you testified about the marijuana,
7 correct?

8 A I'm sorry, say that again?

9 Q You testified about recovering marijuana from my
10 client?

11 A Yes.

12 Q You testified that you recovered the marijuana at the
13 police station?

14 A Yes.

15 Q Okay. What time would you say you searched my client's
16 bag at the police station?

17 A Like I said, approximately 15 minutes after the arrest
18 time I got back to the precinct, I think.

19 Q Okay. You arrested my client at 1647 hours?

20 A I'm not sure. I don't recall exactly the time but --

21 Q Would anything refresh your recollection?

22 A Sure, may I use your memo book?

23 THE COURT: Just look up once your recollection is
24 refreshed.

25 THE WITNESS: Sure.

1 A My memo book says 1645.

2 Q What time was he arrested, my client?

3 A In my memo book it's 1645.

4 I'm sorry, I'm going to retract. 1645 is when I was
5 told to stop your, client and 1647 is the exact under time,
6 arrest time.

7 THE COURT: 1647 is the arrest time?

8 THE WITNESS: Correct.

9 Q And you searched my client's bag 15 minutes later at
10 the precinct?

11 A Correct.

12 Q Okay. Police Officer Zheng, in this case you filled
13 out a marijuana supporting deposition, correct?

14 A Yes.

15 Q Okay. Isn't it a fact that you wrote on that marijuana
16 supporting deposition that at 8/13/2015 at 1647 at 102-10 43rd
17 Avenue in the County of Queens I recovered the above from
18 defendant's backpack. I believe the above substance to be
19 marijuana based upon my professional training as a police
20 officer in the identification of marijuana?

21 THE COURT: Counsel, are you reading from the
22 document not in evidence?

23 I'm giving you a little leeway.

24 MR. WATSON: I'm sorry, Your Honor.

25 Q Isn't it a fact that you made that report?

1 A I did do a report but I don't recall exactly.

2 THE COURT: Why don't you show it to him and see
3 if it refreshes his recollection?

4 COURT OFFICER: (Hanging).

5 Q Isn't it a fact that you indicate in that marijuana
6 supporting deposition that you recovered the marijuana in my
7 client's backpack at 1647?

8 A I just put it as an arrest time. I didn't put exactly
9 what time I got the marijuana.

10 Q My question to you is, in that document, isn't it a
11 fact that you indicate that you recovered the marijuana at
12 1647 hours?

13 A Yes, based on that document.

14 Q You signed this document at the bottom?

15 A Correct.

16 Q Under penalty of Perjury?

17 A Correct.

18 Q So, going back to the scene of the incident, Officer,
19 you and Officer Chen were issuing bike summonses, as you stated
20 before, on the date of my client's arrest?

21 A Yes.

22 Q You were in an unmarked police vehicle?

23 A Correct.

24 Q Okay. You and the other officer were in uniform,
25 correct?

1 A Yes.

2 Q 104th Street is a one-way street that runs north and
3 south, right?

4 A No. 104th Street is a one-way street that runs
5 southbound only.

6 Q You're right. 104th Street runs south.

7 Isn't it a fact that when you encountered my client you
8 testified you were writing a summons for another biker?

9 A I was.

10 Q Okay. That bicyclist, he failed to stop for a stop
11 sign?

12 A He failed to stop at a stop sign, yeah.

13 Q You stopped that bicyclist around 4:35 p.m.?

14 A I could read from my memo book and tell you exactly.

15 Q Thank you, Officer.

16 A 1635 I made the stop.

17 Q 4:35 p.m.?

18 A 4:35, yes.

19 Q When you and your partner first encountered
20 Mr. Rodriguez, you were actually inside your police vehicle
21 writing up the summons?

22 A I was inside.

23 Q Okay. When you were inside, you were actually -- you
24 were filling out the summons, correct?

25 A Correct.

1 Q After you wrote the summons, you actually documented
2 the time that you made that stop in your memo book?

3 A For that stop, I didn't have time to do it because I
4 was chasing after him.

5 Q Okay. In fact, it wasn't you that first saw my client,
6 it was your partner, Officer Chen, that saw him riding the wrong
7 way --

8 A Yes.

9 Q -- or what you say to be the wrong way down a one-way
10 street?

11 A You've got to remember. When I do summonses, I'm
12 always alert about what happened to my surroundings. So, when
13 my partner goes outside, I have to look up and see what my
14 partner is doing and at that point I observed him riding a
15 bicycle the wrong way down the street and I also observed a red
16 light at the same time from my direction.

17 Q You didn't observe a red light -- you --

18 MR. WATSON: Withdrawn.

19 Q You observed a red light in your direction, so you were
20 looking south, correct?

21 A Correct.

22 Q But you couldn't see the red light that was facing
23 north?

24 A As I testified earlier, I did mistake on that one.
25 There was no light facing north for southbound traffic because

1 there's no southbound traffic at that location.

2 Q All right. And you testified earlier that my client
3 made a U-turn and went southbound on 104th Street?

4 A Southbound on 104th. He made a right turn onto 43rd.

5 Q Did Mr. Rodriguez ever make eye contact with you?

6 A Not with me, no.

7 Q Do you know if Mr. Rodriguez ever made any eye contact
8 with your partner, Officer Chen?

9 A My partner was standing outside with full uniform on
10 with a hand up to the sky saying, stop. I don't think he could
11 miss it.

12 Q My question to you is --

13 A I don't know.

14 Q So, you don't know?

15 A No.

16 Q Okay. So, you don't know whether or not my client ever
17 saw --

18 MR. MOUCHETTE: Objection, Your Honor.

19 THE COURT: I don't know what the question is.

20 Q You don't know whether or not my client ever saw your
21 partner tell him to stop?

22 MR. MOUCHETTE: Your Honor, he --

23 THE COURT: Sustained, sustained.

24 Q In this case you also charged my client with Resisting
25 Arrest, correct?

1 A Correct.

2 Q You filled out an arrest report in this case?

3 A Correct.

4 Q Resisting Arrest were one of the charges that you
5 placed on your arrest report?

6 A Correct.

7 Q The reason that you charged my client with Resisting
8 Arrest is because he flailed his arms?

9 A He was moving around with his arms (indicating).

10 Q And he twisted his body?

11 A Correct.

12 MR. WATSON: Your Honor, at this point, I'd like
13 to play Defendant's exhibit A.

14 THE COURT: Sure.

15 Does the officer need to see this?

16 MR. WATSON: Yes.

17 THE COURT: So, we should probably tilt it so he
18 could see it.

19 SERGEANT: Officer, come this way.

20 THE COURT: We'll do it together.

21 (Whereupon a video was played.)

22 THE COURT: Just tell me what street this is.

23 THE WITNESS: 43rd Avenue.

24 The traffic light over there is 102nd Street
25 (indicating).

1 THE COURT: Thank you.

2 104th would be --

3 THE WITNESS: Behind the blue car, right here
4 (indicating).

5 THE COURT: Behind the blue car -- what I can't
6 see?

7 THE WITNESS: Correct.

8 THE COURT: Is that you (indicating)?

9 THE WITNESS: One of them is me, the taller one.

10 THE COURT: Okay.

11 Do you want to play the other one?

12 MR. WATSON: Yes.

13 (Whereupon a video was played.)

14 THE COURT: It's exactly the same thing.

15 Do you have anything else, Mr. Watson?

16 MR. WATSON: Yes.

17 Q So, after watching this video, after Mr. Rodriguez
18 falls to the floor, you and Police Officer Chen immediately exit
19 the vehicle, correct?

20 A Correct.

21 Q Right after you exited the police vehicle, you and
22 Police Officer Chen approached my client?

23 A Yes.

24 Q You immediately grabbed his arms?

25 A Yes.

1 Q And placed them behind his back?

2 A Yes.

3 Q Okay. But before that, my client puts both hands to
4 his head, and he removed something, correct?

5 A Yes, I saw that.

6 Q Were those headphones?

7 A I don't know. I just assume so -- yeah, sure.

8 MR. MOUCHETTE: Objection.

9 THE COURT: Don't assume. Don't assume.

10 Q Let me ask you again, were those headphones that you
11 removed from his ears?

12 THE COURT: Based on the video can you tell?

13 THE WITNESS: I can't tell from the video.

14 THE COURT: Forget about the video; what about
15 when you were there?

16 THE WITNESS: I don't recall.

17 Q So, when you did your invoice report, did you
18 recover -- did you invoice any headphones for my client?

19 A I've got to take a look at the list.

20 Q Would it refresh your recollection to look at --

21 A Just the --

22 Q -- the property clerk invoice?

23 MR. MOUCHETTE: I have it (handing).

24 COURT OFFICER: (Handing).

25 A Yes.

1 Q So, you vouchered a pair of headphones?

2 A Yes.

3 Q All right. So, from your recollection, do you
4 remember -- can you -- did my client wave, like, flail his arms
5 when you tried to arrest him?

6 A He was turning his body around with his arms up.

7 Q Did he ever wave or swing his arms in an attempt to --

8 THE COURT: Counsel, this has nothing to do with
9 probable cause. That's a trial issue.

10 MR. WATSON: Okay.

11 Q Police Officer Zheng, at the time that you pursued my
12 client and arrested my client, he was riding the right way down
13 43rd Avenue, correct?

14 A Yes.

15 Q So, typically, riding a bike down a one-way street,
16 that's typically an offense that you would issue a summons for,
17 correct?

18 A Yes.

19 Q At the time that you arrested my client, you arrested
20 him for disorderly conduct?

21 A Yes.

22 Q Okay. Did you arrest him for -- did you arrest him for
23 the VTL summons?

24 A Yes, the charge was in there.

25 Q Okay. So, you also arrested my client for disorderly

1 conduct?

2 A Yes.

3 Q Okay. Did he create some kind of hazard?

4 A People did gather and look around.

5 MR. MOUCHETTE: Objection.

6 THE COURT: Sustained.

7 Q In this case did my client ever obstruct a vehicle or
8 pedestrian traffic?

9 MR. MOUCHETTE: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. WATSON: No further questions, Your Honor.

12 THE COURT: Any redirect?

13 MR. MOUCHETTE: Yes, Your Honor.

14 MR. WATSON: Actually, I have some more questions.

15 Q When you brought my client to the precinct, there's a
16 desk officer at the precinct, correct?

17 A Yes.

18 Q When you get to the desk officer, the desk officer
19 usually takes the invoice of all the property that was recovered
20 from the arrestee?

21 A Say that again?

22 THE COURT: I don't care about what was usually
23 done; just ask him what was done this time.

24 Q When you arrested my client, you brought him to the
25 precinct?

1 A Correct.

2 Q There was a desk officer at the precinct?

3 A Yes.

4 Q Okay. The desk officer is responsible for vouchering
5 evidence?

6 A No. I'm responsible for vouchering the evidence.

7 Q Does the desk officer --

8 MR. WATSON: Withdrawn.

9 Q In this case did the desk officer make a list of any
10 items recovered from my client?

11 A No. That's not the procedure. The procedure is I have
12 to make a list of the items and put them in the computer and he
13 has to check them in the computer in a so-called patrol system
14 property envelope invoice system, PET -- it's called PETS. And
15 he's going to go onto that system to confer the list that I have
16 and the property next to me in the back.

17 THE COURT: So, he basically just types it in?

18 THE WITNESS: Correct.

19 Q Was there a separate document that the desk officer
20 would generate?

21 A No. Everything is in the computer now -- so, he would
22 just go into the computer, check the list and sign off with his
23 name on it.

24 MR. WATSON: Okay. I have no further questions.

25 THE COURT: Redirect?

1 MR. MOUCHETTE: Yes.

2 REDIRECT EXAMINATION

3 BY MR. MOUCHETTE:

4 Q Officer Zheng, Counsel asked you whether or not
5 August 13, 2015, at 1647 hours was the exact time that you
6 recovered the marijuana, correct?

7 A I recovered the bag at the time, yes.

8 Q You recovered the bag and the marijuana was inside the
9 bag?

10 A Yes.

11 MR. WATSON: Objection.

12 THE COURT: Overruled.

13 Q So, this is, in fact, an accurate statement, correct?

14 A I recovered the bag, yes.

15 Q The defendant was in possession -- you were in
16 possession of the marijuana in the bag at that time, correct?

17 A I was in possession of the bag, yes.

18 THE COURT: You don't know it was marijuana in
19 there at that time?

20 THE WITNESS: No.

21 Q Which you got from the defendant, correct?

22 A Yes.

23 Q You previously said you saw the CCRB video?

24 A Yes.

25 Q At what point in the video was the defendant under

1 arrest?

2 A As soon as I put the handcuffs on him.

3 Q You noted that the arrest time was 1647, correct?

4 A Correct.

5 Q Now, that video showed --

6 THE COURT: You're leading.

7 MR. MOUCHETTE: I'm sorry, Your Honor.

8 Q Counsel asked you about CCRB; was it founded or not?

9 A Unsubstantiated.

10 Q What does that mean?

11 MR. WATSON: Objection. I don't think that's
12 relevant, Your Honor.

13 THE COURT: It's not. Sustained.

14 Anything else?

15 MR. MOUCHETTE: Nothing further, Your Honor.

16 THE COURT: Counsel? Only on those two or three
17 questions.

18 MR. WATSON: Okay.

19 RECROSS-EXAMINATION

20 BY MR. WATSON:

21 Q So, on redirect you were asked about the marijuana
22 supporting deposition, correct?

23 A Yes.

24 Q Okay. On that marijuana supporting deposition, you
25 indicate --

-P.O. ZHENG - DEFENSE - RECROSS-

1 MR. WATSON: Withdrawn.

2 Q So, on that marijuana supporting deposition, you
3 indicate that under -- you indicate that you believed the
4 substance to be marijuana based upon your professional training
5 as a police officer, correct?

6 A It's also field tested at the time.

7 I'm qualified by the NYPD to do a field test of
8 marijuana.

9 Q Okay. You indicate that you recover the marijuana at
10 1647; isn't that correct?

11 THE COURT: He did technically recover it. He
12 just didn't know it was marijuana, according to his
13 testimony, until he got to the precinct. That's his
14 testimony, not mine.

15 MR. WATSON: No further questions.

16 THE COURT: Thank you, Officer. You're done.

17 But before you leave, Mr. Watson wants to call his
18 partner for the next date.

19 Does your partner have the same schedule as yours?

20 THE WITNESS: I could call him right now and tell
21 him to come in tomorrow.

22 THE COURT: Next week?

23 MR. MOUCHETTE: I won't be here Wednesday or
24 Thursday.

25 THE WITNESS: Tuesday?

-PROCEEDINGS-

1 THE COURT: We'll try and put it on for Tuesday.

2 MR. WATSON: Tuesday's fine, Your Honor.

3 THE COURT: I'm probably going to be in AP2; is
4 2:00 okay?

5 MR. WATSON: That's fine.

6 MR. MOUCHETTE: That's fine.

7 THE COURT: What is his schedule?

8 THE WITNESS: 9:30 to 6:00.

9 THE COURT: Perfect.

10 Will you accommodate us and have the officer here?

11 MR. MOUCHETTE: Yes.

12 THE COURT: 2:00 p.m.

13 MR. WATSON: Just for the record, I ask that the
14 ADA or Police Officer Zheng not speak to his partner about

15 --

16 THE COURT: Don't speak to your partner.

17 MS. METZ: We're aware of that.

18 (Continued on following page.)

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-PROCEEDINGS-

1 THE COURT: Tuesday, I'm going to put this into
2 AP2 for 2:00.

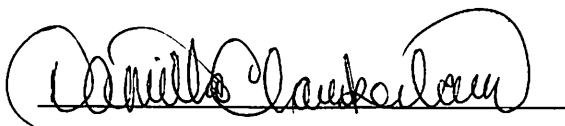
3 Mr. Rodriguez, your lawyer will tell you where to
4 go.

5 AP2, 2:00 p.m.

6 Be on time, otherwise, I'm going to start without
7 you.

8 *****

9 This is certified to be a true and accurate
10 transcript of the stenographic notes.

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15 DANIELLA CHAMBERLAIN

16 Senior Court Reporter
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1 CRIMINAL COURT OF THE CITY OF NEW YORK
2 COUNTY OF QUEENS: PART AP-2
3 - - - - -X
4 The People of the State of New York Docket
5 -against- 2015QN040424
6 Heins Rodriguez, Calendar call
7 Defendant.
8 - - - - -X
9 125-01 Queens Boulevard
10 Kew Gardens, N.Y. 11415
11 March 29, 2016
12 BEFORE: Hon. Stephanie Zaro,
13 Criminal Court Judge
14 APPEARANCES:
15 Richard A. Brown, Esq.
16 District Attorney, Queens County
17 C. Bolz, Esq.
18 BY: Robert Hanophy, Esq.
19 Assistant District Attorney
20 For the People
21 BY: The Legal Aid Society
22 Andre Watson, Esq.
23 Attorney for the Defendant
24 David M. Weber
25 Official Court Reporter

1 COURT OFFICER: Number 85, Heins Rodriguez.

2 MR. WATSON: Legal Aid Society, Andre Watson,
3 W-a-t-s-o-n., on behalf of Mr. Rodriguez.

4 Your Honor, I just would like to make a record.

5 THE COURT: Go ahead.

6 MR. WATSON: Okay. First, today, A.D.A. Mouchette
7 handed me over a copy of the items that were sent between
8 the arresting officer Chang(ph) and his partner, Chance(ph).
9 That exchange took place in the middle of the hearing. Officer
10 Chang(ph) was sworn in earlier that day and cross-examination
11 was to be continued in the afternoon. And in those text
12 messages Officer Chance(ph) and Officer Chang(ph) were
13 communicating about this case, your Honor, specifically about
14 whether or not-- withdrawn-- specifically about where the bag
15 was searched. I do believe that that communication was
16 improper because Officer Chang(ph) was under oath at the time
17 and was not supposed to be discussing his testimony with
18 anyone. So I just want to state that for the record.

19 Additionally, there's some discovery issues, your
20 Honor. It's come to my attention that they're missing pedigree
21 cards.

22 THE COURT: Is it prepared by the officer that
23 already testified?

24 MR. WATSON: Yes.

25 THE COURT: Okay.

1 MR. WATSON: Yes, the pedigree card was prepared by
2 the officer who testified as well as the command log which is
3 a transcription of what the arresting officer prepared. These
4 pieces of discovery are missing, your Honor.

5 So based on that, and what's contained in those two
6 pieces of documentation, I would ask that Officer Chang(ph) be
7 recalled if it's relevant to the hearing.

8 THE COURT: So do you want to just respond to his
9 arguments?

10 MR. BOLZ: Your Honor, a pedigree card contains
11 pedigree information. We will get any documents that, you
12 know, to defense that are required materials. It is not
13 currently in my folder, those documents. So I will talk to the
14 officer and try to get them and provide them to the defense.

15 MR. WATSON: And just for the record, your Honor, ADA
16 Mouchette is in possession of the entire CCRB file. And in the
17 file report the CCRB basically indicates that the CCRB file
18 contains the pedigree card as well as-- pedigree card and--
19 I'm sorry--

20 THE COURT: He has already indicated he doesn't have
21 the pedigree card; he will get it to you.

22 MR. WATSON: Yes, ADA Mouchette does have those
23 documents, your Honor.

24 MR. HANOPHY: Bob Hanophy for the People. I just
25 wanted to add, apparently there was a record by Judge Morris

1 of an alibi, a representative of CCRB, that the only thing
2 that were going to be were to be disclosed were all the
3 recordings and the file report. I just asked ADA Mouchette
4 about counsel's representations; it is theoretically possible
5 that this missing pedigree card might be in our file, which we
6 are under court order not to turn over because it came from
7 CCRB. I am going to go back and check. It came to them from
8 the Police Department. I am just going to give it to him.

9 THE COURT: Thank you. So we don't have to argue
10 about that. What else? Now, let's find out how we are going
11 to do this. I am going to give you an adjournment. We finished
12 with the one witness. Obviously, if there's something in the
13 pedigree card that you need to recall him, then you will
14 recall him on your case.

15 MR. WATSON: Right.

16 THE COURT: Are the People resting? because we don't
17 know whether we actually rested yet, because I don't remember.

18 MR. HANOPHY: I have discussed the matter, and I
19 believe that we are going to call the witness and do a direct
20 examination and have defense counsel do a cross examination of
21 the witness.

22 MR. WATSON: That's correct.

23 THE COURT: So give me a date now that the officer
24 can come back. We will do it again at two p.m., but give me an
25 idea of when you think we will have everybody.

1 MR. HANOPHY: Are we going to do the witness that is
2 here or are we doing the whole thing?

3 MR. WATSON: No, no, no.

4 THE COURT: He doesn't want to do it.

5 MR. WATSON: I was asking.

6 THE COURT: He wants the adjournment.

7 THE PROSECUTOR: Rosario material will be for the
8 other witness, not for this witness, because he doesn't fill
9 out any paperwork, so I don't see why we can't do him.

10 MR. HANOPHY: He's here.

11 MR. BOLZ: Any Rosario material that's relevant
12 would be for Officer Chang(ph), not Officer Chance(ph) because
13 he doesn't fill out any paperwork.

14 MR. WATSON: I do think it's relevant.

15 THE COURT: I don't, but I am going to give you an
16 adjournment any way.

17 MR. WATSON: And also ADA Mouchette also handed over
18 a video-- I'm sorry, an audio of a voice mail that was left by
19 Police Officer Chang(ph).

20 MR. BOLZ: Officer Chen who is here--

21 MR. WATSON: Officer Chen.

22 THE COURT: The voice mail of whom?

23 MR. WATSON: They left him, and I can't hear anything
24 that's on that voice mail.

25 THE COURT: And why is that relevant?

1 MR. HANOPHY: It goes along with the text messages.

2 THE COURT: I think one of you-- Off the record.

3 (whereupon there was an off-the-record conversation)

4 THE COURT: He's getting the adjournment. Give me a
5 date.

6 MR. HANOPHY: I can do any time in May, not the last
7 week.

8 THE COURT: What date?

9 MR. BOLZ: April. I'm goine the first week. I
10 am going to be on vacation.

11 MR. WATSON: I can do the second week in April, your
12 Honor.

13 THE COURT: He said he can't do April. He's going to
14 be gone.

15 MR. BOLZ: The second week.

16 THE COURT: You are going the whole month of April?

17 MR. BOLZ: I am going the first week of April
18 into the second week.

19 THE COURT: What about the third week?

20 MR. BOLZ: Third week I start Intake.

21 THE COURT: There's nothing we can do about that. And
22 then what about the last week?

23 MR. BOLZ: I'm in Intake just starting the
24 third and the fourth week, so that's why in May I'm free,
25 but--

1 MR. WATSON: I'm available, your Honor.

2 THE COURT: How is May 2nd, 3rd, 4th?

3 MR. BOLZ: That works.

4 MR. WATSON: Can I have May 3rd?

5 THE COURT: May 3rd. Again I don't know where I am.
6 You will have to look for me. Hopefully I am in JP1, but no
7 guarantees. You know what? I'm going to put this back in JP1,
8 so that's where the file will be. Okay, Mr. Watson?

9 MR. WATSON: Yes.

10 THE COURT: And I will make you the custodian you
11 find where the file is, and then find me.

12 MR. WATSON: No problem.

13 THE COURT: All right.

14

15 * * *

16 Certified to be a true and accurate transcript of
17 the minutes taken in the above proceeding.

18

19


David M. Weber
Official Court Reporter

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1 CRIMINAL COURT OF THE CITY OF NEW YORK.
2 COUNTY OF QUEENS: PART AP1

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK, :

DOCKET NO.

-against

: 2015QN040424

5 HEINS RODRIGUEZ,

:

Defendant.

6 -----X calendar call

7 125-01 Queens Boulevard
8 Kew Gardens, New York 11415

9 May 3, 2016

10 B E F O R E:

11 THE HONORABLE STEPHANIE ZARO,
12 Judge.

13
14 A P P E A R A N C E S:

15 OFFICE OF RICHARD A. BROWN
16 DISTRICT ATTORNEY - QUEENS COUNTY
17 BY: TEMIMAH FRIEDMAN, Esq.
Assistant District Attorney

18
19 THE LEGAL AID SOCIETY
Attorneys for Defendant
20 120-46 Queens Boulevard
Kew Gardens, New York 11415
21 BY: ANDRE WATSON, Esq.

22
23 FONDA NASON
24 OFFICIAL COURT REPORTER
25

1 THE COURT OFFICER: Calendar Number 1,
2 Heins Rodriguez.

3 MR. WATSON: Andre Watson, Legal Aid
4 Society, for Mr. Rodriguez.

5 MS. FRIEDMAN: Temimah Friedman for the
6 People.

7 THE COURT: Do we have a disposition?

8 MS. FRIEDMAN: Yes.

9 THE COURT: Mr. Watson, do you now withdraw
10 your motion for the hearing?

11 MR. WATSON: Yes, Your Honor.

12 THE COURT: Offer?

13 MS. FRIEDMAN: ACD, three-month seal.

14 MR. WATSON: Join.

15 THE COURT: Adjournment in contemplation of
16 dismissal, three months. The case will be
17 dismissed and sealed.

18 THE DEFENDANT: Okay.

19 THE COURT: Thank you.

20
21 I hereby certify the foregoing to be a true and
22 accurate transcript of the proceeding.

23
24 Fonda Nason,
25 Official Court Reporter